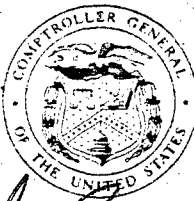


**DECISION**



*Fitzmaurice*  
*PLI*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Bid Rejection as Nonresponsive]* *4842*

FILE: B-199884

DATE: September 9, 1980

MATTER OF: Osan Petroleum Company, Inc. *DLG05 200*

**DIGEST:**

1. Protest filed with GAO more than 10 days after protester learns of initial adverse agency action on protest filed with agency is dismissed as untimely.
2. Protester's consultation with staff of United States Senator while pursuing its protest with contracting agency does not relieve protester of need to satisfy GAO's filing requirements once it learns of initial adverse agency action on protest filed with agency.

Osan Petroleum Company, Inc. (Osan), protests that it was not awarded item No. 1510-34, Diesel Fuel for Warner Robins Air Force Base, Georgia, and item No. 1925-343, Diesel Fuel for the Submarine Support Base at Kings Bay, Georgia, under invitation for bids No. DLA600-80-B-0004 issued by the Defense Fuel Supply Center, Defense Logistics Agency (DLA). *DLG00788*

Osan's bid was low but was rejected as nonresponsive because Osan added "+ freight" to the posted price shown for price adjustment on its bidder price data card. DLA argues that if it accepted this bid, it would be possible for Osan to claim unlimited increases for its transportation costs contrary to the invitation and the applicable regulations.

By letter dated April 1, 1980, Osan protested this decision to the contracting officer. The contracting officer denied this protest in a letter dated April 10, 1980. Osan then scheduled a meeting with the contracting officials for April 25, 1980. After this meeting, Osan was confident that it had convinced the DLA representatives that its bid should be accepted. However, by an undated letter which the record indicates Osan received on or before May 10, 1980, DLA affirmed its

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original determination. Osan later filed a protest with our Office, but not until August 7, 1980. It attributes the delay in filing this protest to the fact that it had been discussing this matter with the office of a United States Senator but the person in charge of the case resigned and it took some time for the new staff member to become familiar with the case.

Under our Bid Protest Procedures, when a protest is initially filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of the protester's knowledge of initial adverse agency action on its protest. 4 C.F.R. § 20.2(a) (1980). As indicated above, DLA's letter of April 10, 1980, notified Osan that its protest was denied. This notification constituted initial adverse agency action, and Osan had 10 working days from that point to file a protest with our Office. See Oswego Package Boiler Company, Cyclotherm Division, B-194714.2, August 6, 1979, 79-2 CPD 84. Therefore, Osan's protest of August 7, 1980, is clearly untimely and not for consideration on the merits. Even if we assume that DLA's undated letter, which Osan received on or before May 10, 1980, constituted initial adverse agency action, under our procedures, Osan's protest of August 7, 1980, is still untimely. Moreover, the fact that Osan was also in contact with the staff of a United States Senator does not relieve it of the obligation of meeting our filing requirements. Cf. Eglen Hovercraft, Incorporated, B-193050, January 22, 1979, 79-1 CPD 39.

Protest dismissed.

*Harry R. van Cleave*  
for Milton J. Socolar  
General Counsel